

## **INITIAL STATEMENT OF REASONS**

The Employment Training Panel (Panel) proposes to amend Sections 4400(r), 4409.1 and 4415 and to repeal Section 4440.1 of Title 22 of the California Code of Regulations.

### Specific Purpose of the Action

The proposed amendments to Section 4400(r), 4409.1 and 4415 are to clarify the regulations. Section 4440.1 is proposed for repeal because it is inapplicable.

### Necessity

#### Amend Section 4400(r), Payment Earned

This regulation defines “payment earned” with reference to specific retention and wage requirements, which no longer accurately reflect program standards. The amendment makes this a general reference to all applicable retention and wage requirements. The amendment also clarifies that “payment earned” means the amount of reimbursement a contractor is entitled to retain upon termination of the contract, based on final billing per trainee.

#### Amend Section 4409.1 Employer Contributions

This regulation sets forth notification criteria to be followed by a Multiple Employer Contractor (MEC) when charging training-related costs to a participating employer. The amendment clarifies the contractual nature of the notification; adds a requirement for prior review and approval of agreement or any writing conveyed by the MEC to participating employer that uses the ETP name or logo; and eliminates an Internet publication procedure that is impractical and has never successfully been implemented. The amendment changes the name to “Participating Employer Contributions” for clarity.

#### Amend 4415, Workforce Training

This regulation caps funds for “supervisors and managers” at 40% of the total population in a given retraining project. Projects for training in a high performance workplace are exempt. The amendment clarifies that supervisors and managers are workers who are exempt from payment of overtime, consistent with the definition of “frontline workers” in Section 4400(ee). It exempts small business (100 or fewer employees) and entrepreneurial training. The amendment also eliminates the exemption for a high performance workplace because it is difficult to separate this type of training from other aspects of continuous improvement that are typically included in the curriculum for a given retraining project. The amendment changes the name of Section 4415 to “Management Training Cap” for clarity.

### Repeal Section 4440.1, Advances

This regulation sets forth criteria for “advance payments” to public agencies and private, nonprofit organizations. Among other things, the criteria caps advances at 15% of funding and requires Department of Finance approval for advances over \$400,000. It also requires a fidelity bond posted through an insurance carrier, naming the Panel as certificate holder; and possibly, a trust surety naming the Panel as beneficiary. The regulation is based on procedures in Government Code applicable to advance payments on state procurement contracts issued by the EDD and other agencies – not ETP. Those procedures are inconsistent with “partial Payments” under UI Code Section 10209(f) , which authorizes partial payments of up to 75% of the approved amount of funding once training has started. Section 10209(f) is less burdensome to the public. There is no need to require the services of an insurance carrier or financial services institution for advance payments, when a higher dollar amount in progress payments is already authorized. Section 10209(f) is also more consistent with ETP program goals since progress payments cannot be made until training starts. In short, the regulation is inconsistent with the Panel’s enabling law, burdensome to the public, and unnecessary.

### Studies, Reports or Documents Relied Upon

The Panel relied on the following document located in the Rulemaking File:

- Memorandum to the Panel dated May 24, 2007.

The Panel did not consider technical, theoretical, or empirical studies reports or documents.

### Alternatives Considered or Rejected

No other alternatives were presented to or considered in connection with the proposed regulatory action.

### Alternatives that Would Lessen Adverse Impact on Small Business

The proposed regulatory action would have no adverse impact on businesses, small or otherwise, as discussed in more detail below. Thus, there are no alternatives that would lessen the impact.

The Panel has not identified any alternatives that would lessen any adverse impact on small businesses. The proposed action to repeal would not have an adverse impact on small business.

### Evidence of No Significant Adverse Impact on Business

The proposed regulatory action is ultimately designed to facilitate ETP funding for training that allows various businesses to improve the skill levels of their employees located in California. Businesses are not required to apply for this funding. Intrinsically, these regulatory actions would have no adverse economic impact on business, significant or otherwise.